

FILE COPY

**STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD**

**IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST**

DOROTHY E. WICKMAN,

RESPONDENT.

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**FINAL DECISION AND ORDER
91 REB 062 and 91 REB 426**

The parties to this action for the purposes of Wis. Stats., section 227.53 are:

Dorothy E. Wickman
N10442 Echo Valley Road
Tomahawk, WI 54487

Wisconsin Real Estate Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Dorothy E. Wickman ("Wickman"), N10442 Echo Valley Road, Tomahawk, Wisconsin 54487, is and was at all times relevant to the facts set forth herein a real estate broker licensed to practice in the State of the Wisconsin pursuant to license #4557. Wickman's date of birth is January 28, 1943. Her real estate broker's license was originally granted to her on July 30, 1974.

2. At all times relevant to the facts set forth herein Wickman was associated with Active Americans Realty, 223 North Fourth Street, Tomahawk, Wisconsin 54487. During the time of the facts set forth herein occurred, this realty company was operated by Wickman's husband, William G. Wickman, Jr., (real estate broker's license #4558). Currently, the realty company is operated by the Respondent Dorothy E. Wickman.

AS TO CASE 91 REB 062

3. On January 3, 1991, Wickman drafted a WB-11 Residential Offer to Purchase whereby David Snarski offered to purchase property owned by Anthony Kryshak and Marian Kryshak. This property was listed for sale with listing broker Alan Bauman.

4. The Kryshak January 3, 1991 Offer to Purchase provided, in part, the following terms:

- a. that Wickman was the agent for the seller;
- b. a purchase price of \$50,000.00;
- c. "earnest money of \$500.00 in the form of check tendered with this offer";
- d. "time is of the essence as to: additional earnest money payment, acceptance, legal possession, occupancy, date of closing, and as to all dates inserted in this offer except none";
- e. "this Offer to Purchase is contingent upon the buyer's ability to obtain financing * * * Buyer has 30 days from acceptance to obtain written financing commitment or offer may be cancelled at seller's option and all earnest money refunded to buyer. Buyer has a down payment of 25% of this offer."; and
- f. "this offer is binding upon both parties only if a copy of the accepted offer is deposited, postage or fees prepaid, in the U.S. Mail or a commercial delivery system, addressed to buyer at Active Americans Realty or by personal delivery of the accepted offer to buyer on or before January 9, 1991."

5. The offer was signed on behalf of the buyer by Respondent Wickman.

6. On January 3, 1991, the sellers accepted the Offer.

7. On January 4, 1991, the buyer signed a note authorizing Wickman to "sign my name on a contract offer of 50,000 (fifty thousand dollars) for the Kryschak property located on Prairie Rapids Rd."

8. Wickman never collected the \$500.00 earnest money from the buyer.

9. No written notice to the seller regarding the failure to collect earnest money was provided to the seller or the listing broker by Wickman.

10. Wickman did not have the written consent of both the seller and the buyer to act as an agent on behalf of the buyer in this matter so as to accept the Offer pursuant to line 64 and 65 of the offer, or to act as a power of attorney for the buyer in signing the offer or to delay receipt of the earnest money contrary to the terms of the written offer.

11. The transaction between the buyer (Snarski) and the sellers (Kryshaks) failed to close because Snarski failed to obtain financing.

12. The Kryshak property was later sold in May of 1991 for the sum of \$47,000.00 to a third party.

14. The terms, conditions, and provisions of the Snarski Offer, which Offer was drafted and signed by Wickman, were never discussed by Wickman with Snarski and Wickman did not provide a copy of the Offer to Snarski.

15. During the course of the negotiations between Kryshaks and Snarski, the Kryshaks offered to assist Snarski with financing the purchase and this offer was made known to Wickman. Wickman did not inform Snarski of this offer to assist in financing the purchase.

AS TO CASE 91 REB 426

16. On October 24, 1990, Charles M. Johnson ("Johnson") listed vacant land consisting of 49.25 acres in the Town of Cassian, County of Oneida, State of Wisconsin, with the listing broker Town and Country, Inc., of Tomahawk, Wisconsin. The managing broker for Town and Country, Inc. is D.C. Schulz.

17. The term of listing for the Johnson property was from October 24, 1990, up to and including midnight of the 24th day of October, 1991.

18. On October 3, 1991, Respondent Wickman, drafted a WB-13 Vacant Land Offer to Purchase for the signature of Donovan Helke and Wesley Helke, wherein the Helkes offered to purchase the Johnson property.

19. The Helke offer provided, in part:

- a. a purchase price of \$14,500.00;
- b. earnest money of \$500.00 in the form of check tendered with the offer;
- c. a provision that the offer was a cash offer and not contingent upon financing or the sale of other property;
- d. that the offer was to be binding upon both parties only if a copy of the accepted offer was deposited, postage or fees prepaid, in the U.S. Mail, or a commercial delivery system, addressed to buyer at Active Americans Realty or by personal delivery of the accepted offer to buyer on or before October 5, 1991; and
- e. a statement at line 2 that the broker drafting the Offer was the agent of seller.

20. Wickman never presented the Helke offer to either the listing broker or to the seller Johnson (her principal).

21. On or about October 3, 1991, Wickman contacted the seller Johnson and asked that Johnson terminate his listing contract with Town and Country, Inc. Johnson declined to terminate the listing contract.

22. On or about October 7, 1991, Wickman called Donovan Helke and told him that Johnson wasn't ready to accept the offer and that he needed until October 25, 1991 to decide whether or not he was willing to sell the property to the Helkes.

23. Shortly after October 7, 1991, the Helkes learned that their October 3, 1991 offer had never been presented to either the listing broker or to the seller.

24. Wesley Helke contacted Wickman on October 14, 1991 and requested that Active American Realty return their earnest money of \$500.00.

25. On October 14, 1991, the Helkes contacted Town and Country, Inc. and signed an offer drafted by D.C. Schulz for the purchase of the Johnson property for the price of \$14,500.00. This offer was presented to the seller Johnson on October 14, 1991 and accepted by him. The transaction closed on October 30, 1991.

26. At no time did Johnson inform Wickman that he needed until October 25, 1991 to decide on whether or not to accept the Helke offer.

27. At no time relevant to this matter was Wickman granted permission by the listing broker to contact Johnson directly regarding sale of the property to Helke.

CONCLUSIONS OF LAW

28. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to sec. 452.14, Wis. Stats.

29. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.

30. Respondent Dorothy E. Wickman, has violated:

VIOLATIONS AS TO CASE 91 REB 062

a. Section 452.14(3)(i), Wis. Stats., and secs. RL 24.025 and 24.07, Wis. Adm. Code by failing to disclose to the Kryshaks that the earnest money had not been collected, and for failing to comply with the fiduciary responsibilities of loyalty, accounting, disclosure and diligence to her principal in this transaction.

b. Section 452.14(3)(i), Wis. Stats., and secs. RL 24.025, RL 24.03(2)(b), 24.07 and 24.08, Wis. Adm. Code by failing to place in writing all commitments regarding the transaction including any agreement regarding the delayed collection of earnest money from the buyer and the consent of both the buyer and seller to allow her to act as an agent for both of them in the same transaction.

c. Sections 452.14(3)(b), 452.14(3)(i) and 452.14(3)(k) Wis. Stats., and secs. RL 24.025 and 24.07 Wis. Adm. Code by making a substantial misrepresentation with reference to the transaction injurious to the seller by stating in the offer which was drafted and signed by her that earnest money had been tendered with the offer, while it had not been and when Wickman was acting as both the agent for the seller and the agent for the buyer, without having first obtained the informed consent of the parties to act in a dual agency capacity in this transaction.

d. Section 452.14(3)(i) Wis. Stats., and secs. RL 15.02(1), 15.02(2), 24.03(2)(c) and 24.07(1) Wis. Adm. Code by failing to provide a copy of the offer to buyer, failing to discuss and explain the terms of the offer to the buyer and by failing to disclose material facts regarding the transaction to the buyer.

VIOLATIONS AS TO CASE 91 REB 426

e. Section 452.14(3)(i), Wis. Stats., and secs. RL 24.13(1) and 24.13(2), Wis. Adm. Code by failing to promptly submit the October 3, 1991 Helke offer to the seller through the listing broker.

f. Section 452.14(3)(i), Wis. Stats., and secs. RL 24.025 and 24.13(5), Wis. Adm. Code by attempting to negotiate with the seller directly and without going through the listing broker.

g. Sections 452.14(3)(b), 452.14(3)(i) and 452.14(3)(k), Wis. Stats., and secs. 24.025, 24.03(2)(b), and 24.07(1), Wis. Adm. Code by misrepresenting to the purchasers Donovan Helke and Wesley Helke that their offer to purchase had been presented to the seller and that the seller needed additional time within which to decide on whether or not to accept the offer, and by failing to inform the seller, her principal, that an offer had been prepared and was ready to be submitted, all at a time when she attempted to convince the seller to terminate his listing contract with the listing broker, Town and Country, Inc., and for failing to comply with the fiduciary responsibilities of loyalty, disclosure and diligence to her principal in this transaction.

h. Section 452.14(3)(i), Wis. Stats. and secs. RL 24.025, and 24.08, Wis. Adm. Code by designating Active Americans Realty as the place of delivery for seller's acceptance of buyer's offer, without first having a written agreement of the parties allowing respondent to act a agent for both the seller and the buyer in this transaction.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that the real estate broker license of Respondent Dorothy E. Wickman, license number 4557, date of birth January 28, 1943, is SUSPENDED FOR A PERIOD OF ONE YEAR commencing ten days subsequent to the date of this Order.

IT IS FURTHER ORDERED, that investigative files 91 REB 062 and 91 REB 426 be, and hereby are closed.

Dated this 9TH day of DECEMBER, 1993.

WISCONSIN REAL ESTATE BOARD

By: _____

Arthur J. Schils

ATY2-4756 9/3/93//10/19/93

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

DOROTHY E. WICKMAN,
RESPONDENT.

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STIPULATION
91 REB 062 and 91 REB 426
LS 9306031 REB

The parties in this matter agree and stipulate as follows:

1. This Stipulation is entered into for the purpose of resolving formal administrative proceedings numbered LS 9306031 REB which involves Division of enforcement investigative files 91 REB 062 and 91 REB 426. Respondent DOROTHY E. WICKMAN ("Respondent") consents to the resolution of these matters by this Stipulation and the attached Final Decision and Order.

2. Respondent understands that by the signing of this Stipulation she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent has had the opportunity to consult with legal counsel regarding these matters and the legal implications of this Stipulation. Attorney Robert D. Reid, P.O. Box 8063, 555 Scott Street, Wausau, WI 54402, represents the Respondent in these matters.

4. Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

5. With respect to the attached Final Decision and Order, Respondent neither admits nor denies the facts as set forth in the Findings of Fact however, she agrees that the Board may make the Findings of Fact and may reach the Conclusions set forth in the Conclusions of Law and may enter the Order of Suspension.

6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order. The matter shall then be returned to the Administrative Law Judge for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board or the Administrative Law Judge have been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. If the Board accepts the terms of this Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

8. Respondent agrees that Complainant's attorney, Charles J. Howden, may appear at any deliberative meeting of the Board with respect to the Stipulation but that his appearance is limited to statements in support of the Stipulation and to answer any questions the Board may have regarding the Stipulation. Respondent waives her right to have notice of that hearing and to be present at the meeting of the Board.

9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

Dorothy E. Wickman
DOROTHY E. WICKMAN, Respondent

11-1-93
Date

Robert D. Reid
Robert D. Reid, Attorney
P.O. Box 8063
Wausau, WI 54402

11-2-93
Date

Charles J. Howden
Charles J. Howden, Attorney
Division of Enforcement

11-4-93
Date

ATY2-4775
9/03/93
10/19/93

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Real Estate Board/

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Real Estate Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Real Estate Board.

The date of mailing of this decision is December 10, 1993.